

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ERIC DICKS,

Plaintiff,

v.

H. MOSELEY, S. GATES, MELINDA
CHAN, and K. HOLIDY,

Defendants.

Case No. 1:24-cv-00492-HBK (PC)

ORDER TO RANDOMLY ASSIGN TO
DISTRICT JUDGE

FINDINGS AND RECOMMENDATIONS TO
DISMISS ACTION WITHOUT PREJUDICE¹

(Doc. No. 1)

14-DAY DEADLINE

Plaintiff Eric Dicks is a state prisoner proceeding pro se and *in forma pauperis* in this civil rights action. For the reasons set forth below, the undersigned recommends that the District Court dismiss this action without prejudice for Plaintiff's failure to comply with a court order and prosecute this action.

BACKGROUND

Plaintiff initiated this action by filing a civil rights complaint under 42 U.S.C. § 1983. (Doc. No. 1, "Complaint"). On July 25, 2024, pursuant to 28 U.S.C. § 1915A the Court issued a

¹ This matter was referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302 (E.D. Cal. 2023).

1 screening order finding Plaintiff's initial Complaint failed to state a federal claim against any
 2 Defendant. (*See generally* Doc. No. 7). The Court afforded Plaintiff three options to exercise no
 3 later than August 29, 2024: (1) file an amended complaint; (2) file a notice that he intends to
 4 stand on his Complaint subject to the undersigned recommending the district court dismiss for
 5 reasons stated in the July 25, 2024 Screening Order; or (3) file a notice to voluntarily dismiss this
 6 action, without prejudice, under Federal Rule of Civil Procedure 41(a)(1) because no defendant
 7 had yet been served. (*Id.* at 8-9). The Court granted Plaintiff two separate extensions of time to
 8 comply with the July 25, 2024 Order, with a final deadline of November 18, 2024 for Plaintiff
 9 to deliver his response to the Court's Screening Order to correctional officials for mailing. (Doc.
 10 Nos. 9, 11).

11 The Court expressly warned Plaintiff in multiple orders that if he fails to timely respond to
 12 this Court Order or seek an extension of time to comply the undersigned will recommend that the
 13 district court dismiss this case for Plaintiff's failure to comply with a court order and prosecute
 14 this action. (Doc. No. 7 at 9 ¶ 2; Doc. 9 at 2 ¶ 3; Doc. No. 11 at 2 ¶ 3). As of the date of these
 15 Findings and Recommendations, Plaintiff has failed to submit a response to the Court's July 25,
 16 2024 Screening Order, or request a further extension of time to comply, and the time to do so has
 17 expired. (*See* docket.)

18 **APPLICABLE LAW AND ANALYSIS**

19 **A. Legal Standard**

20 Federal Rule of Civil Procedure 41(b) permits the court to involuntarily dismiss an action
 21 when a litigant fails to prosecute an action or fails to comply with other Rules or with a court
 22 order. *See* Fed. R. Civ. P. 41(b); *see Applied Underwriters v. Lichtenegger*, 913 F.3d 884, 889
 23 (9th Cir. 2019) (citations omitted). Similarly, this Court's Local Rules, which correspond with
 24 Federal Rule of Civil Procedure 11, provide, "[f]ailure of counsel or of a party to comply with . . .
 25 any order of the Court may be grounds for the imposition by the Court of any and all sanctions
 26 . . . within the inherent power of the Court." E.D. Cal. L.R. 110. "District courts have inherent
 27 power to control their dockets" and, in exercising that power, may impose sanctions, including
 28 dismissal of an action. *Thompson v. Housing Auth., City of Los Angeles*, 782 F.2d 829, 831 (9th

1 Cir. 1986). A court may dismiss an action based on a party's failure to prosecute an action, obey
 2 a court order, or comply with local rules. *See, e.g., Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61
 3 (9th Cir. 1992) (dismissal for failure to comply with a court order to amend a complaint); *Malone*
 4 *v. U.S. Postal Service*, 833 F.2d 128, 130-31 (9th Cir. 1987) (dismissal for failure to comply with
 5 a court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure
 6 to prosecute and to comply with local rules). In determining whether to dismiss an action, the
 7 Court must consider the following factors: (1) the public's interest in expeditious resolution of
 8 litigation; (2) the Court's need to manage its docket; (3) the risk of prejudice to the defendants;
 9 (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less
 10 drastic sanctions. *Henderson*, 779 F.2d at 1423; *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir.
 11 1988).

12 **B. Analysis**

13 After considering each of the above-stated factors, the undersigned concludes dismissal
 14 without prejudice is warranted in this case. As to the first factor, the expeditious resolution of
 15 litigation is deemed to be in the public interest, satisfying the first factor. *Yourish v. California*
 16 *Amplifier*, 191 F.3d 983, 990-91 (9th Cir. 1999).

17 Turning to the second factor, this Court's need to efficiently manage its docket cannot be
 18 overstated. This Court has "one of the heaviest caseloads in the nation," and due to the delay in
 19 filling judicial vacancies, which was further exacerbated by the COVID-19 pandemic, operates
 20 under a declared judicial emergency. *See* Amended Standing Order in Light of Ongoing Judicial
 21 Emergency in the Eastern District of California. This Court's time is better spent on its other
 22 matters than needlessly consumed managing a case with a recalcitrant litigant. The Court cannot
 23 effectively manage its docket when a litigant ceases to litigate his/her case or respond to a court
 24 order. Thus, the Court finds that the second factor weighs in favor of dismissal.

25 Delays inevitably have the inherent risk that evidence will become stale or witnesses'
 26 memories will fade or be unavailable and can prejudice a defendant, thereby satisfying the third
 27 factor. *See Sibron v. New York*, 392 U.S. 40, 57 (1968). Thus, the third factor—risk of prejudice
 28 to defendant—weighs in favor of dismissal since a presumption of injury arises from the

1 unreasonable delay in prosecuting an action. *Anderson v. Air W.*, 542 F.2d 522, 524 (9th Cir.
2 1976). Because Plaintiff's inaction amounts to an unreasonable delay in prosecuting this action,
3 the third factor weighs in favor of dismissal.

4 The fourth factor usually weighs against dismissal because public policy favors the
5 disposition of cases on the merits. *Pagtalunan v. Galaza*, 291 F.3d 639, 643 (9th Cir. 2002).
6 However, "this factor lends little support to a party whose responsibility it is to move a case
7 toward disposition on the merits but whose conduct impedes progress in that direction," which is
8 the case here. *In re Phenylpropanolamine (PPA) Products Liability Litigation*, 460 F.3d 1217,
9 1228 (9th Cir. 2006) (citation omitted). Indeed, "trial courts do not have time to waste on
10 multiple failures by aspiring litigants to follow the rules and requirements of our courts."
11 *Pagtalunan*, 291 F.3d at 644 (Trott, J., concurring in affirmance of district court's involuntary
12 dismissal with prejudice of habeas petition where petitioner failed to timely respond to court
13 order and noting "the weight of the docket-managing factor depends upon the size and load of the
14 docket, and those in the best position to know what that is are our beleaguered trial judges.")).
15 Further, as set forth in the Screening Order, the Court already determined that the Complaint, as
16 pled, failed to state a claim, so this factor does not weigh in favor of the Plaintiff.

17 Finally, the Court's warning to a party that failure to obey the court's order will result in
18 dismissal satisfies the "considerations of the alternatives" requirement. *Ferdik*, 963 F.2d at 1262;
19 *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d at 1424. The Court's July 25, August 29, and
20 October 21 Orders each expressly warned Plaintiff that his failure to respond to the Court's Order
21 would result in a recommendation of dismissal of this action. (Doc. No. 7 at 9 ¶ 2; Doc. 9 at 2 ¶
22 3; Doc. No. 11 at 2 ¶ 3). Thus, Plaintiff had adequate warning that dismissal could result from his
23 noncompliance. And the instant dismissal is a dismissal *without* prejudice, which is a lesser
24 sanction than a dismissal with prejudice, thereby satisfying the fifth factor.

25 After considering the factors set forth *supra* and binding case law, the undersigned
26 recommends dismissal, without prejudice, under Fed. R. Civ. P. 41(b) and Local Rule 110.

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Accordingly, it is hereby **ORDERED**:

The Clerk of Court randomly assign this case to a district judge for consideration of these Findings and Recommendations.


It is further **RECOMMENDED**:

This action be **DISMISSED** *without prejudice* for Plaintiff's failure to obey court orders and failure to prosecute.

NOTICE TO PARTIES

These Findings and Recommendations will be submitted to the United States District Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days after being served with a copy of these Findings and Recommendations, a party may file written objections with the Court. *Id.*; Local Rule 304(b). The document should be captioned, "Objections to Magistrate Judge's Findings and Recommendations" and shall not exceed **fifteen (15) pages**. The Court will not consider exhibits attached to the Objections. To the extent a party wishes to refer to any exhibit(s), the party should reference the exhibit in the record by its CM/ECF document and page number, when possible, or otherwise reference the exhibit with specificity. Any pages filed in excess of the fifteen (15) page limitation may be disregarded by the District Judge when reviewing these Findings and Recommendations under 28 U.S.C. § 636(b)(1)(C). A party's failure to file any objections within the specified time may result in the waiver of certain rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014).

Dated: November 27, 2024


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE